

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

WALTER KENNY,

Plaintiff,

- against -

MADISON ALLIED, LLC

Defendant.

Docket No. 1:19-cv-868

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Walter Kenny (“Kenny” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Madison Allied, LLC (“Madison” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of thirteen copyrighted photographs of a home in Ronkonkoma, New York, owned and registered by Kenny. Accordingly, Kenny seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and transacts business in New York and is registered with the New York Department of State Division of Corporations.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Kenny has a usual place of business at 7 Cranberry Circle, Medford, New York 11763.

6. Upon information and belief, Madison is a domestic limited liability company organized and existing under the laws of the State of New York, with a place of business at 31-00 47<sup>th</sup> Avenue, Suite 3100, Long Island City, New York 11101. Upon information and belief, Madison is registered with the New York State Department of Corporations to do business in New York. At all times material hereto, Madison posts real estate listings on the website at the URL: [www.Estatelly.com](http://www.Estatelly.com) (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photographs**

7. Kenny photographed a home in Ronkonkoma, New York (the “Photographs”). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Kenny is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with United States Copyright Office and were given Copyright Registration Number VA 2-131-506.

#### **B. Defendant’s Infringing Activities**

10. Madison continued to run the Photographs on their real estate listing located at: <https://www.estate.com/listings/info/412-shelter-rd> to sell a home for \$349,000. Screenshots of the Photographs on the listing are attached hereto as Exhibit B.

11. Madison did not license the Photographs from Plaintiff for continued use on its listing, nor did Madison have Plaintiff's permission or consent to continue to publish the Photographs on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Madison infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Madison has never been, licensed or otherwise authorized to continue to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Madison have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

18. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Madison be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York

February 13, 2019

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz

Richard P. Liebowitz

11 Sunrise Plaza, Suite 305

Valley Stream, NY 11580

Tel: (516) 233-1660

RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff Walter Kenny*